

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION

BEFORE THE COMMISSIONER OF THE OFFICE OF FINANCIAL AND INSURANCE REGULATION

In the matter of

BANC OF AMERICA SECURITIES
LLC and BANC OF AMERICA
INVESTMENT SERVICES, INC.,

Respondents.

ADMINISTRATIVE CONSENT ORDER

WHEREAS, Banc of America Securities LLC ("BAS") and Banc of America Investment Services, Inc. ("BAI") and, together with BAS, ("Respondents") are broker-dealers registered in the State of Michigan; and

WHEREAS, coordinated investigations into Respondents' activities in connection with certain of their sales practices regarding the underwriting, marketing, and sale of Auction Rate Securities ("ARS") during the period of approximately August 1, 2007, through February 11, 2008, have been conducted by a multistate task force; and

WHEREAS, Respondents have cooperated with regulators conducting the investigations by responding to inquiries, providing documentary evidence and other materials, and providing regulators with access to facts relating to the investigations; and

WHEREAS, Respondents have advised regulators of their agreement to resolve the investigations relating to their practices in connection with the underwriting, marketing, and sale of ARS; and

WHEREAS, Respondents agree to make (or to have made on their behalf) certain payments as part of the resolution of the investigations; and

WHEREAS, Respondents elect to permanently waive any right to a hearing and appeal under the Administrative Procedures Act of 1969, 1969 PA 306, as amended, MCL 24.201 *et seq.* and the Uniform Securities Act of 1964, 1964 PA 265, as amended, MCL 451.501 *et seq.*, and the Rules promulgated thereunder R 451.601.1 – 451.808.8, (the Uniform Securities Act), with respect

1 to this Administrative Consent Order (the "Order");

2 NOW, THEREFORE, the Commissioner of the Michigan Office of Financial and Insurance
3 Regulation ("OFIR"), as administrator of the Uniform Securities Act, hereby enters this Order:

4 **I.**

5 **FINDINGS OF FACT**

6 1. Respondents admit the jurisdiction of OFIR, neither admit nor deny the Findings of
7 Fact and Conclusions of Law contained in this Order, and consent to the entry of this Order by
8 OFIR.

9 2. Beginning in March 2008, the task force began its investigation of Respondents'
10 underwriting, marketing, and sale of ARS.

11 3. In or about August and September 2007, some ARS auctions experienced failures.
12 These failures were primarily based on credit quality concerns related to the ARS at issue, which
13 often involved underlying assets of collateralized debt obligations.

14 4. During the fall of 2007 and into the beginning months of 2008, as the default rates
15 on subprime mortgages soared and the market in general began experiencing significant credit
16 tightening, monoline insurers that insured many issuances of ARS were also becoming distressed
17 and were at risk of ratings downgrades.

18 5. The result of the overall market conditions in the fall of 2007 and into the beginning
19 of 2008 resulted in increasing concerns regarding market liquidity, as well as a declining demand
20 for ARS.

21 6. The task force concluded that Respondents should have had knowledge that, during
22 the fall of 2007 and winter of 2008, the auction markets were not functioning properly and were at
23 increased risk for failure.

24 7. During that time period, significant numbers of buyers had been exiting the market
25 and the continued success of the auctions was reliant upon the lead broker-dealers, such as BAS,
26

1 making increased support bids. These support bids had the effect of artificially propping up the
2 market and creating the illusion that the auction rate market was functioning as normal.

3 8. However, during that time, Respondents continued to market and sell ARS without
4 informing customers of the heightened risks associated with holding these securities.

5 9. Instead, Respondents engaged in a concerted effort to market ARS underwritten by
6 BAS towards its large retail customer accounts without advising the retail customers of any of the
7 potential risks associated with a failed auction or market illiquidity.

8 10. On or about February 11, 2008, without notifying any of its customers, BAS
9 stopped broadly supporting the auctions for which BAS was lead broker-dealer.

10 11. The decision left thousands of Respondents' customers stuck holding illiquid ARS.

11 12. On or about September 10, 2008, Respondents, Bank of America Corporation
12 ("BAC"), and Blue Ridge Investments, L.L.C. ("Blue Ridge") agreed, in principle, that BAC
13 would cause Blue Ridge to buy back, at par plus accrued but unpaid interest or dividends, ARS for
14 which auctions were in failed mode from "Eligible Investors," which included all individual
15 investors, all charitable organizations with account values up to \$25 million and small and medium
16 sized businesses with account values up to \$10 million who purchased ARS from Respondents.

17 II.

18 CONCLUSIONS OF LAW

19 1. OFIR has jurisdiction over this matter pursuant to the Michigan Uniform Securities
20 Act. The Uniform Securities Act authorizes OFIR to regulate the issuance, offer, sale, or purchase
21 of securities; to prohibit fraudulent practices in relation to securities; to establish civil and criminal
22 sanctions for violations of the act and civil sanctions for violation of the rules promulgated
23 pursuant to the act; and to require the registration of broker-dealers, agents, investment advisers,
24 and securities within the State of Michigan.

25 A. Respondents Engaged in Dishonest and Unethical Practices.

1 2. As described in the Findings of Fact section above, Respondents inappropriately
2 marketed and sold ARS without adequately informing their customers of the increased risks of
3 illiquidity associated with the product for the time period August 1, 2007, through February 11,
4 2008.

5 3. As a result, Respondents violated Section 204 of the Uniform Securities Act, MCL-
6 451.604(a)(1)(g).

7 B. Respondents Failed to Supervise Their Agents.

8 4. As described in the Findings of Fact section above, Respondents failed to properly
9 supervise their agents with respect to the marketing and sale of ARS from October 1, 2007, to
10 February 11, 2008.

11 5. As a result, Respondents violated Section 204 of the Uniform Securities Act, MCL
12 451.604(a)(2).

13 6. OFIR finds the following relief appropriate and in the public interest.

14 **III.**

15 **ORDER**

16 On the basis of the Findings of Fact, Conclusions of Law, and Respondents' consent to the
17 entry of this Order,

18 IT IS HEREBY ORDERED:

19 1. This Order concludes the investigation by OFIR and any other action that OFIR could
20 commence under applicable Michigan law as it relates to Respondents' underwriting, marketing, and
21 sales of ARS, provided however, that excluded from and not covered by this paragraph 1 are any
22 claims by OFIR arising from or relating to the "Order" provisions contained herein.

23 2. This Order is entered into solely for the purpose of resolving the referenced multistate
24 investigation, and is not intended to be used for any other purpose.

25 3. Respondents will CEASE AND DESIST from violating the Uniform Securities Act
26 and will hereafter comply with the Uniform Securities Act.

1 4. Within ten days after the entry of this Order, Respondents shall pay the sum of
2 \$468,833.56 to the State of Michigan, allocated in the following manner: \$421,950.20 to the State
3 of Michigan General Fund, and \$46,883.36 to the Michigan Investor Protection Trust Fund.

4 5. In the event another state securities regulator determines not to accept Respondents'
5 settlement offer, the total amount of the State of Michigan payment shall not be affected, and shall
6 remain at \$468,833.56.

7 6. Respondents shall comply with the following requirements:

8 a. Eligible Investors

9 i. No later than October 21, 2008, BAC shall have caused Blue Ridge
10 to offer to buy back, at par plus accrued and unpaid interest or dividends, Eligible
11 ARS (as such term is defined below) for which auctions are in failed mode from
12 Eligible Investors (as such term is defined below) who purchased such Eligible ARS
13 from Respondents prior to February 13, 2008 (the "Offer"). For purposes of the
14 Offer, Eligible ARS means ARS purchased from Respondents on or before February
15 13, 2008, that were subject to an auction failure on or after February 11, 2008. The
16 Offer shall remain open for a period between October 10, 2008, and December 1,
17 2009, unless extended by Blue Ridge.

18 ii. "Eligible Investors" shall mean:

19 (a) Natural persons (including their IRA accounts, testamentary
20 trust and estate accounts, custodian IGMA and UTMA accounts, and
21 guardianship accounts) who purchased Eligible ARS from Respondents;

22 (b) Charities, endowments, or foundations with Internal Revenue
23 Code Section 501(c)(3) status that purchased Eligible ARS from
24 Respondents and that had \$25 million or less in assets in their accounts with
25 Respondents as determined by the customer's aggregate household
26 position(s) at Respondents as of September 9, 2008; or

1 (c) Small Business that purchased Eligible ARS from
2 Respondents. For purposes of this provision, "Small Business" shall mean
3 Respondents' customers not otherwise covered in paragraph III.6.a.ii(a) and
4 ii(b) above that had \$15 million or less in assets in their accounts with
5 Respondents as of September 9, 2008.

6 iii. Respondents will have provided prompt notice to customers of the
7 settlement terms and Respondents will have established a dedicated telephone
8 assistance line, with appropriate staffing, to respond to questions from customers
9 concerning the terms of the settlement.

10 **b. Relief for Eligible Investors Who Sold Below Par**

11 No later than December 31, 2008, Respondents shall have promptly provided notice
12 to any Eligible Investor that Respondents could reasonably identify who sold Eligible ARS
13 below par between February 11, 2008, and September 22, 2008. Such investors will be
14 paid the difference by Respondents between par and the price at which the Eligible Investor
15 sold the Eligible ARS. Any such Eligible Investors identified after December 31, 2008,
16 shall be promptly paid the difference between par and the price at which the Eligible
17 Investors sold the Eligible ARS.

18 **c. Consequential Damages Claims**

19 No later than October 10, 2008, Respondents shall make reasonable efforts
20 promptly to notify those Eligible Investors who own Eligible ARS that, pursuant to the
21 terms of the settlement, an independent arbitrator, under the auspices of the Financial
22 Industry Regulatory Authority ("FINRA"), will be available for the exclusive purpose of
23 arbitrating any Eligible Investor's consequential-damages claim.

24 Respondents shall consent to participate in the North American Securities
25 Administrators Association ("NASAA") Special Arbitration Procedure (the "SAP")
26 established specifically for arbitrating claims arising out of an Eligible Investor's inability
to sell Eligible ARS. Respondents shall notify Eligible Investors of the terms of the SAP.

1 Nothing in this Order shall serve to limit or expand any party's rights or obligations as
2 provided under the SAP. Arbitration shall be conducted, at the customer's election, by a
3 single non-industry arbitrator and Respondents will pay all forum and filing fees.

4 Arbitrations asserting consequential damages of less than \$1 million will be decided
5 through a single chair-qualified public arbitrator who will be appointed through the FINRA
6 list selection process for single arbitrator cases. In arbitrations where the consequential
7 damages claimed are greater than or equal to \$1 million, the parties can, by mutual
8 agreement, expand the panel to include three public arbitrators who will be appointed
9 through FINRA's list procedure.

10 Any Eligible Investors who choose to pursue such claims through the SAP shall
11 bear the burden of proving that they suffered consequential damages and that such damages
12 were caused by their inability to access funds invested in Eligible ARS. In the SAP,
13 Respondents shall be able to defend themselves against such claims; provided, however,
14 that Respondents shall not contest liability for the illiquidity of the underlying ARS position
15 or use as part of their defense any decision by an Eligible Investor not to borrow money
16 from Respondents.

17 All customers, including but not limited to Eligible Investors who avail themselves
18 of the relief provided pursuant to this Order, may pursue any remedies against Respondents
19 available under the law. However, Eligible Investors that elect to utilize the SAP are
20 limited to the remedies available in that process and may not bring or pursue a claim
21 relating to Eligible ARS in another forum.

22 **d. Institutional Investors**

23 Respondents shall endeavor to work with issuers and other interested parties,
24 including regulatory and governmental entities, to expeditiously and on a best efforts basis
25 provide liquidity solutions for institutional investors that purchased Eligible ARS from
26 Respondents and are not entitled to participate in the buyback under Section III
("Institutional Investors").

1 Beginning on December 31, 2008, and then quarterly thereafter, Respondents shall
2 submit a written report to a representative specified by NASAA outlining the efforts in
3 which Respondents have engaged and the results of those efforts with respect to
4 Institutional Investors' holdings in Eligible ARS. The written reports will be submitted 20
5 days following the end of the quarter. Respondents shall confer with the representative no
6 less frequently than quarterly to discuss Respondents' progress to date. Such written
7 reports and quarterly meetings shall continue until no later than December 31, 2009.
8 Following every quarterly meeting, the representative shall advise Respondents of any
9 concerns and, in response, Respondents shall detail the steps that Respondents plan to
10 implement to address such concerns.

11 e. **Relief for Municipal Issuers**

12 Respondents shall refund refinancing fees to municipal auction rate issuers that
13 issued such securities through Respondents in the initial primary market between August 1,
14 2007, and February 11, 2008, and refinanced those securities through Respondents after
15 February 11, 2008. Refinancing fees are those fees paid to Respondents in connection with
16 a refinancing and are exclusive of legal fees and any other fees or costs not paid to
17 Respondents in connection with the transaction.

18 f. **Repayment of Interest on Loans Provided To Eligible Investors**

19 To the extent that Respondents loaned money to Eligible Investors secured by
20 Eligible ARS, after February 11, 2008, at an interest rate that was higher than that paid on
21 such Eligible ARS, Respondents shall refund the difference to such Eligible Investors.

22 g. **Administrative Settlement Payments**

23 i. Respondents shall pay a total of FIFTY MILLION (\$50,000,000)
24 DOLLARS, which shall be allocated among and paid to the Commonwealth of
25 Massachusetts, the state of New York, and such other states and territories that enter
26 administrative or civil consent orders approving the terms of the NASAA settlement
(together with the Commonwealth of Massachusetts and the state of New York, the

1 “Approving States”). Any such allocation shall be made at the discretion of the
2 Approving States;

3 ii. The State of Michigan’s portion of the settlement payment shall be
4 \$468,833.56 and shall be paid to the OFIR no later than ten business days after the
5 date of the Consent Order.

6 **h. In Consideration of the Settlement**

7 OFIR will:

8 i. Terminate the investigation of Respondents’ underwriting,
9 marketing, and sale of ARS to Eligible Investors as defined herein; and

10 ii. Refrain from taking legal action, if necessary, against Respondents
11 with respect to their institutional investors until December 31, 2008; OFIR shall
12 issue continuances of that period as it deems appropriate; and

13 iii. OFIR will not seek additional monetary settlement from Respondents
14 in connection with all underlying conduct relating to Respondents’ underwriting,
15 marketing, and sale of ARS to investors.

16 i. If, after this Order is executed, Respondents fail to comply with any of the
17 terms set forth herein, OFIR may take appropriate remedial action.

18 7. If payment is not made by Respondents, or if Respondents default in any of their
19 obligations set forth in this Order, OFIR may vacate this Order, at its sole discretion, upon 10 days
20 notice to Respondents and without opportunity for administrative hearing.

21 8. This Order as entered into by OFIR waives any disqualification contained in the
22 laws of the State of Michigan, or rules or regulations thereunder, including any disqualifications
23 from relying upon the registration exemptions or safe harbor provisions that BAI, BAS, or any of
24 their affiliates may be subject to as a result of the findings contained in this Order. This Order also
25 is not intended to subject BAI or BAS or any of their affiliates to any disqualifications contained in
26 the federal securities laws, the rules and regulations thereunder, the rules and regulations of self
regulatory organizations, or various states’ or U.S. Territories’ securities laws, including, without

1 limitation, any disqualifications from relying upon the registration exemptions or safe harbor
2 provisions. In addition, this Order is not intended to form the basis for any such disqualifications.

3 9. For any person or entity not a party to this Order, this Order does not limit or create
4 any private rights or remedies against Respondents including, without limitation, the use of any e-
5 mails or other documents of Respondents or of others for auction rate securities sales practices, limit
6 or create liability of Respondents, or limit or create defenses of Respondents to any claims.

7 10. Nothing herein shall preclude the State of Michigan, its departments, agencies, boards,
8 commissions, authorities, political subdivisions and corporations, other than the OFIR and only to the
9 extent set forth in paragraph 1 above, (collectively, "State Entities") and the officers, agents or
10 employees of State Entities from asserting any claims, causes of action, or applications for
11 compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive relief
12 against Respondents in connection with certain auction rate securities sales practices at Respondents.

13 11. This Order and any dispute related thereto shall be construed and enforced in
14 accordance with, and governed by, the laws of the State of Michigan without regard to any choice
15 of law principles.

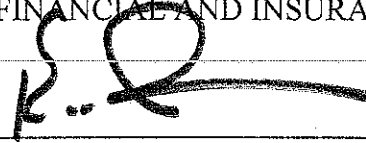
16 12. Respondents, through their execution of this Order, voluntarily waive their right to a
17 hearing on this matter and to judicial review of this Order under the Administrative Procedures Act
18 of 1969, 1969 PA 306, as amended, MCL 24.201 *et seq.* and the Uniform Securities Act of 1964,
19 1964 PA 265, as amended, MCL 451.501 *et seq.*, and the Rules promulgated thereunder R
20 451.601.1 – 451.808.8.

21 13. Respondents enter into this Order voluntarily and represents that no threats, offers,
22 promises, or inducements of any kind have been made by OFIR or any member, officer, employee,
23 agent, or representative of OFIR to induce Respondents to enter into this Order.

24 14. This Order shall be binding upon Respondents and each of their successors and
25 assigns with respect to all conduct subject to the provisions above and all future obligations,
26 responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions.

Dated this 25th day of June, 2009.

BY ORDER OF THE COMMISSIONER OF THE OFFICE
OF FINANCIAL AND INSURANCE REGULATION



Commissioner,
Office of Financial and Insurance Regulation

1 **CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY BANC OF AMERICA**
2 **SECURITIES LLC AND BANC OF AMERICA INVESTMENT SERVICES, INC.**

3 Banc of America Securities LLC ("BAS") and Banc of America Investment Services, Inc.
4 ("BAI" and, together with BAS, "Respondents"), hereby acknowledge that they have been served
5 with a copy of this Administrative Order, have read the foregoing Order, are aware of their right to
6 a hearing and appeal in this matter, and have waived the same.

7 Respondents admit the jurisdiction of OFIR, neither admit nor deny the Findings of Fact
8 and Conclusions of Law contained in this Order, and consent to entry of this Order by OFIR as
9 settlement of the issues contained in this Order.

10 Respondents agree that they shall not claim, assert, or apply for a tax deduction or tax credit
11 with regard to any state, federal, or local tax for any administrative monetary settlement that
12 Respondents shall pay pursuant to this Order.

13 Respondents state that no promise of any kind or nature whatsoever was made to them to
14 induce them to enter into this Order and that they have entered into this Order voluntarily.

15 Steve Chaiken represents that he/she is Managing Director of BAS, and
16 that, as such, has been authorized by BAS to enter into this Order for and on behalf of BAS.

17 _____ represents that he/she is _____ of BAI and
18 that, as such, has been authorized by BAI to enter into this Order for and on behalf of BAI.

19 Dated this 19th day of June, 2009.

20 BANC OF AMERICA SECURITIES LLC

21 By: Steve Chaiken

22 Title: Managing Director

23 State of NEW YORK)
24) ss.
25 County of NASSAU)

26 SUBSCRIBED AND SWORN TO before me this 19th day of JUNE 2009.

Elizabeth M. Coppola
Notary Public

My commission expires: 10/25/09

1
2 BANC OF AMERICA INVESTMENT SERVICES,
INC.

3 By: [Signature]

4 Title: RONALD J. NEWTH
COO & SUP

5 State of Massachusetts

6 County of Suffolk) ss.

7 SUBSCRIBED AND SWORN TO before me this 19th day of June 2009.

8 [Signature]
9 Notary Public

10 My commission expires:

11 July 4, 2014



MARY ANN CARROLL
Notary Public
Commonwealth of Massachusetts
My Commission Expires
July 4, 2014